

California Western Law Review

Volume 57 | Number 2

Article 9

2021

“And They Took My Milk!”

Bennett Capers

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/cwlr>

Recommended Citation

Capers, Bennett (2021) ““And They Took My Milk!”,” *California Western Law Review*. Vol. 57 : No. 2 , Article 9.

Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol57/iss2/9>

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in California Western Law Review by an authorized editor of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

“AND THEY TOOK MY MILK!”

BENNETT CAPERS[†]

INTRODUCTION

“After I left you, those boys came in there and took my milk. That’s what they came in there for. Held me down and took it. I told Mrs. Garner on em. . . . Them boys found out I told on em. Schoolteacher made me open up my back, and when it closed it made a tree. It grows there still.”

“They used cowhide on you?”

“*And they took my milk.*”

“They beat you and you was pregnant?”

“*And they took my milk!*”

—Toni Morrison, *Beloved*¹

Before reading Andrea Freeman’s insightful book, *Skimmed: Breastfeeding, Race, and Injustice*, I had never heard of the Fultz quadruplets. But I grew up in South Carolina, one state over from the Fultz sisters, in a household where there were always cans of Pet Evaporated Milk in the cabinets. We used evaporated milk for all sorts of things, from creaming and sweetening coffee to making strawberry shortcake for Sunday dinner. Although I am a generation younger than the Fultz quadruplets, I also grew up in a place where, to my knowledge, no one breastfed. Certainly not my mother, my aunts, or any of the other middle-class Black women in our circle. Breastfeeding was primitive and indecent, as primitive as the Africans I saw every afternoon after school when *Tarzan* was on, and as indecent as the naked African women that seemed to be in every issue

[†] Professor of Law and Director of the Center on Race, Law, and Justice, Fordham Law School. B.A. Princeton University; J.D. Columbia Law School. capers@law.fordham.edu.

1. TONI MORRISON, *BELoved* 19–20 (1987) (emphasis added).

of *National Geographic* magazine.² In the Southern Black community where I grew up, breastfeeding was like scrubbing clothes with a washing-board when a washing machine was available—it just wasn’t done. Or rather, I assume it just wasn’t done.

Skimmed’s brilliance is that it disabused me of my naivete. Freeman’s book showed me the interconnected web that constrains the “decision” not to breastfeed, including laws, history, marketing, and more. As Freeman notes, “Approximately 83 percent of White mothers and 82.4 percent of Latinx mothers report ever attempting to breastfeed, while 66.4 percent of Black mothers report ever trying” (p. 10). When adding class, the numbers are even more extreme: “Only 37 percent of low-income Black women initiate breastfeeding” (pp. 10–11). The facile assumption might be that Black mothers, particularly poor Black mothers, are more likely to grow up in poorer “communities with minimal to nonexistent breastfeeding resources and support mechanisms[.]”³ But as *Skimmed* reveals, “the problem is even deeper” (p. 4). By weaving together the story of the Fultz sisters, Freeman demonstrates the interconnectedness of Pet Milk using the quadruplets as commodities, along with the lasting impact of slavery and the bad mother trope, and the entanglement of the government and corporations in marketing formula, particularly to low-income women.

Part I of this Review provides a brief overview of Freeman’s book, focusing in particular on the interplay between the Fultz sisters’ story and current efforts to direct Black women towards formula. Indeed, the interplay may be greater than Freeman lets on. Part II offers questions that I selfishly wish Freeman explored and that I hope she will take up in the future as she continues her “pioneering theory of food oppression.”⁴ For example, left unasked in *Skimmed* is the

2. Daniel Victor, National Geographic *Acknowledges Its Racist Past Coverage*, N.Y. TIMES (March 13, 2018), <https://www.nytimes.com/2018/03/13/business/media/national-geographic-race.html> (images that only recently prompted an apology from the magazine). Looking back, why we had the subscription is beyond me, but we did.

3. Kimberly Seals Allers, *Too Many U.S. Communities Are ‘First Food Deserts,’* WOMEN’S ENEWS (Feb. 19, 2013), <https://womensenews.org/2013/02/too-many-us-communities-are-first-food-deserts/>.

4. *Andrea Freeman*, UNIV. HAW. MANOA WILLIAM S. RICHARDSON SCH. OF L., <https://www.law.hawaii.edu/person/andrea-freeman> (last visited Jan. 1, 2021).

question of why feminist groups have not done more to champion breastfeeding protections for all. Similarly, unasked is perhaps a more fundamental question: Is breastfeeding feminist?

It is inevitable to have questions that one wishes for the author to address. But my questions—my wish list of questions, if you will—are not meant to take away from the book's importance or its lessons. Freeman makes clear race matters. And, if I may borrow from William Faulkner, Freeman shows that "[t]he past is never dead. It's not even past."⁵ Most importantly, Freeman demonstrates that Sethe's cry to Paul D., in Toni Morrison's Pulitzer Prize winning novel, *Beloved*, is a cry many Black women could make. "And they took my milk!"⁶

I. CONTROL

As Freeman illustrates in the introduction, her book "weave[s] together the story of the Fultz sisters with a legal, political, cultural and social analysis of low breastfeeding rates in the Black community" (p. 13).

The Fultz sisters' story alone makes for an interesting read. Born in a segregated hospital on May 23, 1946, the sisters became the world's first recorded identical quadruplets, making them newsworthy (p. 1). Their story is primarily tied to Fred Klenner, the white doctor who delivered the girls and immediately took control of the girls' lives. Dr. Klenner went so far as to replace the names their mother planned to give them with names of his choice, naming the girls "after members of his own family" (p. 19). Without consulting the girls' parents, Klenner also entered into negotiations with manufacturers of evaporated milk to market the girls for profit. The highest bidder—or at least the bidder who provided the most generous terms to Klenner and *his* family—was Pet Milk, which obtained exclusive rights to market the girls (p. 20). To be clear, the contract Klenner arranged compensated the girls' family. The family received land, medical care, a modest income, and of course, Pet Milk products. The idea was that the girls would not be breastfed but instead would rely, and supposedly flourish, on Pet Milk formula. However, as Freeman

5. WILLIAM FAULKNER, REQUIEM FOR A NUN 92 (1950).

6. MORRISON, *BELOVED*, *supra* note 1, at 20.

clarifies, the girls' family got the short end of the bargain, struggling almost from the very beginning to make ends meet. Even more troubling, shortly "after the girls turned six, Dr. Klenner and a Pet Milk representative appeared in front of a judge" to ask that another couple, one chosen by Klenner himself, be appointed as the girls' legal guardians (p. 31). The judge agreed, and Pet Milk bought a brick house for the new guardians and girls to spend the remainder of their formative years (pp. 31–33). Pet Milk benefited from this control: using the girls to market formula "was highly successful" and opened the door to racially-targeted formula marketing to Black mothers, which remains unregulated today (p. 33). Freeman points out the benefit to the quadruplets is less clear. It is certainly difficult to say they thrived, let alone flourished.

Although it is impossible prove conclusively, Freeman is persuasive in showing how the current low breastfeeding rates among Black mothers are at least partially attributable to Pet Milk's marketing campaign and the campaigns of similar formula providers. Freeman concedes that formula was already the norm for Black women in the 1940s (p. 35). Indeed, she notes that for all women, breastfeeding was rare (p. 50). The practice of separating enslaved Blacks from their infants and forcing them to serve as wet nurses for their slave owners' children undoubtedly plays a role in why breastfeeding rates remain low among Black mothers (p. 39). Economic circumstances matter, too, since historically, Black women have not had the luxury to remain at home and breastfeed (pp. 46, 52, 118).

It also seems probable that targeted advertising explains why breastfeeding rates among Black mothers remained stagnant, even as it rose among whites (pp. 51–51). As Freeman observes, companies like Pet Milk "employ many marketing techniques that reach disproportionately more Black mothers than White ones" (p. 55). Such companies provide formula at low cost or no cost at all to hospitals, where staff "often rely on stereotypes and assume that Black women will choose not to breastfeed" (p. 55). They also sell formula to the federal government for distribution through the United States Department of Agriculture's (USDA) Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), whose recipients are disproportionately Black (p. 115). In turn, WIC recipients benefit from brand loyalty when WIC distributions end (p. 117). Indeed, one

2021]

"AND THEY TOOK MY MILK!"

323

of the strengths of *Skimmed* is that it foregrounds how a "complex web of intersecting[] law[s], policies, and practices obstruct the ability of Black women to initiate or sustain breastfeeding" (p. 114). Indeed, I suspect this "complex web" may be stronger and more inescapable than Freeman acknowledges.

Thus far, I mentioned the marketing of the Fultz sisters without mentioning their race. In part because it is so unnecessary. It is the very fact that the Fultz sisters were Black that makes it so easy to understand how Dr. Klenner, who was white, took control of their lives. Klenner usurped the privilege of naming the girls, negotiated the girls' childhood away, commodified them for his benefit and the benefit of a formula company, and even subjected the girls to "public viewings" (p. 22). The fact they were Black explains why it was so easy for Dr. Klenner and Pet Milk to use the law to remove them from their parents. Such racial exploitation also explains why women who organize to encourage breastfeeding target their efforts in white communities (p. 50). It also explains why, even today, hospitals seem to spend so little time consulting with Black mothers to determine what *they* want.

Since my scholarship focuses on race and criminal justice, I can add that race disparities explain why we are so comfortable subjecting Black women to state surveillance⁷ and criminalizing Black motherhood.⁸ This is all part of a larger scheme of denying Black women agency, a traceable denial, as is almost everything, to slavery, and the control, rape, and auctioning of Black women. After all, the Black woman's "reproductive destiny was bound to capital

7. See generally KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017); Jennifer C. Nash, *From Lavender to Purple: Privacy, Black Women, and Feminist Legal Theory*, 11 CARDOZO WOMEN'S L.J. 303, 319 (2005) ("[B]ecause the black female body is inscribed and engraved with particular gendered and racialized cultural meanings, the black female subject has never been granted the same kind of privacy as the white female"); Michele Estrin Gilman, *Welfare, Privacy, and Feminism*, 39 U. BALT. L.F. 1, 15–16 (2008); Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540 (2012).

8. See generally DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938 (1997); Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 CALIF. L. REV. 1239 (2012).

accumulation; black women gave birth to property and directly to capital itself in the form of slaves.”⁹ It also has medical provenance. One recalls that researchers “routinely used Black subjects” and dismissed the idea of seeking consent from Black women. For example, there is the now familiar story of Henrietta Lacks, whose cells were collected from her without her consent.¹⁰ Indeed, “[f]or decades after her death, doctors and scientists repeatedly failed to ask her family for consent as they revealed Lacks’s name publicly, gave her medical records to the media, and even published her cells’ genome online.”¹¹ But it goes back even further. Consider this description of Dr. J. Marion Sims:

In 1845, Alabama’s J. Marion Sims horrifically started experimenting on the vaginas of eleven enslaved women for a procedure to heal a complication of childbirth called *vesicovaginal fistula*. The procedures were ‘not painful enough to justify the trouble’ of anesthesia, he said. It was a racist idea to justify his cruelty, not something Sims truly knew from his experiments. “Lucy’s agony was extreme,” Sims later noted in his memoir. After a marathon of surgeries into the early 1850s—one woman, Anarcha, suffered under his knife thirty times—Sims perfected the procedure for curing the *fistula* [and] started healing White victims . . . A massive bronze and granite monument dedicated to him—the first U.S. statute depicting a physician—now sits at Fifth Avenue and 103rd Street, across from the Academy of Medicine.¹²

This Review opened with a quote from Toni Morrison’s novel *Beloved*, from a scene where Sethe recounts her milk being stolen. It is no coincidence that the person who whips her, leaving a “tree” on her back—in a very real sense, branding her—is the white master Schoolteacher, who claims the authority of science.¹³ Just as it is no coincidence that Morrison’s later novel, *Home*, returns to the control

9. HAZEL V. CARBY, *RECONSTRUCTING WOMANHOOD* 24–25 (1987).

10. Editorial, *Henrietta Lacks: Science Must Right a Historical Wrong*, NATURE (Sept. 1, 2020), <https://media.nature.com/original/magazine-assets/d41586-020-02494-z/d41586-020-02494-z.pdf>.

11. *Id.*

12. IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA 185–86* (2016).

13. MORRISON, *BELOVED*, *supra* note 1, at 20.

2021]

"AND THEY TOOK MY MILK!"

325

of Black women's bodies, this time by including a central character, Dr. Beau, modeled on the father of gynecology, Dr. J. Marion Sims.¹⁴ This is all part of what the literary theorist Saidiya Hartman might call "the afterlife of slavery."¹⁵ All of this is connected.

II. QUESTIONS

Among legal academics, it is common to test theories by interposing counterfactuals. Reading *Skimmed*, the counterfactuals abound. Is it possible to say that the Fultz sisters' lives would have been more rewarding if Dr. Klenner never inserted himself? If they were never commodified? Similarly, is it possible to say that, but for the targeted advertising along the lines of race, the breastfeeding rates among Black mothers would be significantly different? Of course, it is impossible to say. This is one of the shortcomings of Freeman's book but an unavoidable one. That said, I do hope Freeman will continue to explore these issues in her future work. There are certainly other avenues to explore and questions to answer. I offer a handful below.

First, although what motivates *Skimmed* is the belief breastmilk is better, what Freeman leaves unexamined is whether breastmilk is better in locales that are both "first food deserts"¹⁶ and food deserts where finding fresh, healthy food can be a challenge. Is it possible to solve one problem without addressing the other? If the only food available to poor mothers is fast food, or nutrient poor food, is breastfeeding truly better than formula?

Second, since so much seems to turn on evidence that breastfeeding is better, I wondered what the current state of lactation education is and how that education can be improved. In the future, I would love for Freeman to deploy surveys to see what different

14. See TONI MORRISON, *HOME* (2012); Courtney Lyon, *Toni Morrison's Home and the Dark Foundations of Gynecology*, IMPOSSIBILITIES (Oct. 20, 2019), <https://morrison.sunygeneseoenglish.org/2019/10/20/toni-morrison-home-and-the-dark-foundations-of-gynecology/>.

15. SAIDIYA HARTMAN, *LOSE YOUR MOTHER: A JOURNEY ALONG THE ATLANTIC SLAVE ROUTE 6* (2007).

16. Kimberly Seals Allers first coined the term "first food deserts" to describe "communities with minimal to nonexistent breastfeeding resources and support mechanism for the first food—breast milk." Allers, *supra* note 3.

populations understand and know about breastfeeding. I suspect the results would be both jarring and illuminating. It might be useful, as well, to consider how educating students in school about breastfeeding—both boys and girls—could make a difference in the public acceptance of breastfeeding.

Third, as I read *Skimmed*, especially the sections on the inadequate workplace accommodations for women who want to breastfeed, I could not help but wonder whether feminist groups have done enough in advocating for workplace protections. The passage of the Pregnancy Discrimination Act in 1978, in response to the Supreme Court's decision in *Geduldig v. Aiello*,¹⁷ was possible because of agitation from women's groups, in particular, the Campaign to End Discrimination Against Pregnant Workers.¹⁸ Have women's groups brought the same energy in pushing for more breastfeeding accommodations, especially in industries where poorer women are likely to work? Or is this another example where most feminists inadvertently leave poor women and women of color behind, as the relative paucity of attention given to domestic caregivers attests?¹⁹ As the relative lack of attention given to indigent victims of sexual assault indicates, at most, an afterthought in the #MeToo movement?²⁰

Beyond this, the question that seems to linger just below the surface of *Skimmed* is whether breastfeeding is feminist. Near the book's end, Freeman acknowledges this question, noting that from "a feminist perspective, encouraging women to breastfeed can be a form of oppression" (p. 173). But she lets the observation trail off without fully exploring the question. I wish she had. Should we aspire to a world where women, even if by "choice," are tethered to their children after childbirth? The provocative law review article *Lactation Law*

17. 417 U.S. 484 (1974); *History of the Pregnancy Discrimination Act*, JURIST (Dec. 20, 2014), <https://www.jurist.org/archives/feature/background-for-pda/>.

18. For more on this history, see generally DEBORAH DINNER, *THE SEX EQUALITY DILEMMA: WORK, FAMILY, AND LEGAL CHANGE IN NEOLIBERAL AMERICA* (2019).

19. See Joan C. Tronto, *The Nanny Question in Feminism*, 17 HYPATIA 34 (Spring 2002).

20. P.R. Lockhart, *Women of Color in Low Wage Jobs Are Overlooked in the #MeToo Movement*, VOX (Dec. 19, 2017, 4:10 PM EST), <https://www.vox.com/identities/2017/12/19/16620918/sexual-harassment-low-wages-minority-women>.

2021]

"AND THEY TOOK MY MILK!"

327

suggests the answer may be no.²¹ To be sure, breastfeeding may be suitable for infants. Even in Margaret Atwood's dystopian novel, *The Handmaid's Tale*, the male leadership values breastfeeding and allows the handmaids to breastfeed for a brief period before they take the infants away.²² Maybe this in itself should be troubling.

While it may be clear that breastfeeding is beneficial for infants, it is less clear that breastfeeding is ideal for women. Of course, this is unless the benefit to women is that breastfeeding itself is "a form of power," what Jacqueline Schafer calls "the powerful independence that it represents from corporate America."²³ Still, one cannot help but wonder if breastfeeding is a net-positive or a net-negative for mothers. The question certainly makes me want to revisit some of the feminist texts I read in college and law school. Specifically, I am thinking about Dorothy Dinnerstein's *The Mermaid and the Minotaur: Sexual Arrangements and Human Malaise*. Just one quote: "[W]hat makes Motherhood monstrous, atavistic, is that we force these primitive biological underpinnings . . . to carry a peculiarly human, and wildly disproportionate, psychological weight."²⁴ I think too of Shulamith Firestone's feminist manifesto *The Dialectic of Sex: The Case for a Feminist Revolution*, in which she calls for new technologies to free women from not just breastfeeding but the whole "tyranny of reproduction."²⁵

The question of whether breastfeeding is feminist leads me to my final question, at least last for now: Is it possible that Black mothers are already ahead of the game? Have they figured out success turns on freedom, freedom from being tethered? In other words, is it possible that it is not the breastfeeding rate among Black mothers that is too low? Instead, might it be the breastfeeding rate among white mothers is too high?

21. See Meghan Boone, *Lactation Law*, 106 CALIF. L. REV. 1827 (2018).

22. MARGARET ATWOOD, *THE HANDMAID'S TALE* (1985).

23. Jacqueline Schafer, *Power Over Profit: Why We Should All Care About the Trump Administration's Response to Breastfeeding*, LEGAL VOICE (Aug. 2, 2018), <http://blog.legalvoice.org/2018/08/>.

24. DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE* 77–78 (1976).

25. SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX* 213 (1970).

CONCLUSION

One of the pleasures of reviewing *Skimmed* is that it gave me much to consider. The book even prompted me to revisit my childhood and understand the interconnected web of factors that must have influenced my mother's decision not to breastfeed. A web that is so delicate and intricate as to be almost invisible, such that she did not need to view her "decision" as a decision at all.

Skimmed also prompted me to wonder how and when things will change. To her credit, at the end of *Skimmed*, Freeman notes the importance of cultural changes.²⁶ Freeman points to an episode of *Black-ish* in which the main character enters a room wearing a breast pump and proceeds to offer a vigorous defense of breastfeeding (p. 176). Freeman applauds this episode and other cultural shifts in the perception of Black motherhood and breastfeeding. Indeed, the very last sentence in *Skimmed* is this: "It is time to tell a new story about Black motherhood" (p. 177). I agree, of course, though my friendly amendment to the sentence would be "stories" instead of "story."

The book also gives me hope that new stories are indeed being told, including many since *Skimmed*'s release. For example, in the tennis world, coverage of Serena Williams almost always includes images of her as a doting mother. Ditto for Meghan Markle and her son Archie, whom she breastfed.²⁷ Additionally, on October 1, 2020, actress, model, and public figure Chrissy Teigen announced she and her husband, singer John Legend, lost a child due to pregnancy complications. "Driving home with no baby," she wrote.²⁸ "How can this be real?"²⁹ Her openness—when the norm around pregnancy loss until then had been silence—was so jarring that the *New York Times*

26. A confession: As I've written previously, I'm a firm believer that "[r]eal change . . . often begins with popular culture." Bennett Capers, *Criminal Procedure, the Police, and The Wire as Dissent*, 2018 U. CHI. L. F. 65, 85 (2019).

27. Jennifer Savin, *Meghan Markle Opens Up About the Realities of Breastfeeding*, COSMOPOLITAN (Oct. 12, 2020), <https://www.cosmopolitan.com/uk/body/health/a34343354/meghan-markle-breastfeeding/#:~:text=%22A%20lot%20of%20people%20don,and%20it%20was%20a%20lot.%22>.

28. Chrissy Teigen (@Chrissyteigen), TWITTER (Sept. 30, 2020, 9:27 PM), <https://twitter.com/chrissyteigen/status/1311523032289091584>.

29. *Id.*

2021]

"AND THEY TOOK MY MILK!"

329

wrote about it in an article.³⁰ Quite possibly, the story changed the way people view pregnancy loss. And quite possibly, all of these stories are changing the way people view Black motherhood. It is also noteworthy that Teigen previously shared a photo of herself breastfeeding her other children, which received nearly three million likes in one day on Instagram.³¹ I have always held similar views about President Obama's impact on the perception and reality of Black fatherhood. Is it possible that closing the racial gap in breastfeeding could be as simple as having Cardi B or Nicki Minaj breastfeed their infants in public?

Maybe that is the genius of *Skimmed*: that a book about the Fultz sisters, marketing, and breast milk led me to think about Cardi B, Nicki Minaj, and all mothers out there.

30. Mike Ives, *Chrissy Teigen and John Legend Lose Baby After Pregnancy Complications*, N.Y. TIMES (Oct. 1, 2020), <https://www.nytimes.com/2020/10/01/style/chrissy-teigen-john-legend-baby.html>.

31. Sherie Ryder, *Chrissy Teigen Breastfeeding 'Twins' Courts Controversy*, BBC (July 9, 2018), <https://www.bbc.com/news/blogs-trending-44765410>.